THE HONOUABLE SRI JUSTICE V.ESWARAIAH

W.P. No. 19759 of 2006

Date:19-07-2007

Between:

Toddy Cooperative Society,Velgonda village rep. By its President Gunda Swamy Goud

.. PETITIONERS

AND

The Govt. of A.P. rep. By its Special Chief Secretary to Govt.,Hyderabad three others

.. RESPONDENTS

ORDER:

The petitioner seeks a writ of mandamus to declare the impugned proceedings vide Rc.No.lB3/3281/2002, dated 20.04.2005 issued by the 3rd respondent, as illegal and arbitrary.

It is the case of the petitioner-Toddy Cooperative Society, Velgonda village, Veepanagandla mandal, Mahaboobnagar District is that it is holding the licence from 25.04.2002 to 31.03.2007. During the subsistence of the said licence period while it was carrying on business on 18.10.2002 the Prohibition and Excise Inspector, Kollapur inspected the shop of the petitioner and found that the toddy was adulterated with chloral hydrate and therefore after following due procedure prescribed in law, drawn the samples under cover of panchanama and case was registered in
PCR No.521/2002-03, dated 18.10.2002.

It is stated that the Chemical Examiner for Prohibition and Excise, Hyderabad also found that the toddy sample was found adulterated with chloral hydrate as per the report, dated 19.04.2002. Thereafter, a show cause notice, dated 13.03.2003 was issued to the petitioner calling upon him as to why licence No.8, dated 25.04.2002 should not be cancelled under Section 31(1) of the A.P. Excise Act and the same was served on him on 30.01.2004 and as there was no explanation, the licence was cancelled by proceedings, dated 17.03.2004 in Rc.No.B3/3281/2002 by the Prohibition and Excise Superintendent, Mahboobnagar. It is stated that meanwhile the criminal case registered against the petitioner was ended in acquittal in PCR

No.521/2002-03, dated 18.10.2002 by the Judicial Magistrate of First Class, Kollapur in C.C.No.2/02-03 on 04.03.2005. Pursuant to the said acquittal, the petitioner made a representation, dated 29.03.2005 requesting to restore the said licence, but the said application has been rejected by the impugned order, dated 20.04.2005. The petitioner questions the said order.

The learned counsel appearing for the petitioner submits that once the allegations made against the petitioner with regard to the adulteration of the toddy were not established in a criminal Court, the petitioner is entitled for restoration of the licence.

I am unable to accept the said contention of the learned counsel for the petitioner for the reason that under the provisions of the A.P. Excise Act (for short 'the Act') for adulteration of toddy or the liquor, the action contemplated is to cancel or suspend the licence and also to prosecute the licensee for the criminal offence. Therefore, the proceedings to cancel the licence under Section 31 of the Act are different from the penal action to be initiated under Section 37(a) of the Act. Chapter-VI of the Act deals with licences and permits i.e. form and conditions of licence etc., power to cancel or suspend licence etc., power to withdraw licence and surrender of licence. But, whereas the Chapter-VII of the Act deals with penal provisions. Therefore, the proceedings initiated under

Chapter-VI of the Act are distinct and different from the criminal prosecution under Chapter-VII of the Act. Therefore, I am of the opinion that the petitioner is not entitled for restoration of licence merely because the criminal case was ended in acquittal. Admittedly, the initiation of criminal proceedings comes under Section 37-A of the Act; whereas the cancellation of licence comes under Section 31 of the Act. Therefore, I am of the opinion that the petitioner

is not entitled for any restoration of licence. I do not find any infirmity or illegality in the impugned order and therefore, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

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V.ESWARAIAH, J.

Date:19.07.2007
Ccm